

BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
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EXCELL AGENT SERVICES, L.L.C.,  
COMDISCO, INC.,  
GOLDEN ENTERPRISES, INC.,  
VOLTDELTA RESOURCES, INC.

Appellants,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

Docket No. 1900-03-S/U (4)

NOTICE OF DECISION:  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

Excell Agent Services, L.L.C. (Excell), Comdisco, Inc. (Comdisco), Golden Enterprises, Inc. (Golden), and VoltDelta Resources, Inc. (VoltDelta) are referred to herein collectively as Appellants. Appellants have filed claims for refund for transaction privilege and use tax paid on sales or purchases of business equipment Appellants contend is tax-exempt telecommunication equipment.

Excell is engaged in the business of providing telephone directory assistance to telecommunications companies such as AT&T and Bell Canada. When a directory assistance call comes into Excell, it is first "picked up" by switch equipment ("Category A equipment"). The Arizona Department of Revenue (the "Department") has conceded that this equipment is tax-exempt switchboard equipment and has refunded the associated tax. The Category A equipment routes calls to various "work stations" ("Category B equipment"). Category B equipment consists mainly of computer terminals at which Excell operators sit and take incoming calls. These operators gather information through a voice recording system ("Category G equipment") that asks questions such as "What city?" and "What listing?"



1 An Excell operator listens to the caller's responses and accesses Excell's telephone listing  
2 database through the Category B workstation. In order to access the database in a useable fashion, it is  
3 necessary to use network routers ("Category D equipment"), database control equipment ("Category C")  
4 and database storage ("Category E equipment"). The Excell operator finds the correct listing based on the  
5 caller's information.

6 Once the desired listing is found, the caller is given the number and the choice to either hang up  
7 and dial the number or have Excell connect the call for a fee. In most instances, the requested number  
8 and choice is given to the caller by a recorded message called a "voice feature node."  
9 If the caller chooses to have Excell connect the call for the extra charge, the caller is told to press a  
10 particular key and the call is connected through use of the Category A equipment.

11 In February 2000, Excell requested a refund of Arizona use tax. Excell is now seeking a refund in  
12 the amount of \$45,880.36 for the period January 1996 through 1997 for its purchase and lease of  
13 Category G equipment from Golden.

14 Golden provides telephone companies and their operator service organizations with training  
15 systems and specialized audio recording and voice playback equipment. Golden's Personalized  
16 Response System provides operators with a recorded voice playback device. This device consists of  
17 phrases recorded individually by each operator and stored within the digital memory of a computer  
18 system. Callers receive a greeting, the requested phone number, and further options in the form of voice  
19 recordings.

20 Between 1996 and 1999, Golden leased its voice message system to Excell. Golden also sold  
21 supporting equipment and charged "right to use fees" to Excell. In February 2000, Golden submitted a  
22 request for a refund of transaction privilege tax. Golden is now seeking a refund in the amount of  
23 \$61,242.50 for the period of January 1, 1996 through September 30, 1999.

24 Comdisco is a provider of technology network services and software tools. It leased equipment  
25 for the taking, storage, and playback of voice messages to Excell. Comdisco also licensed software to  
Excell. In September 1999, Comdisco submitted a request for a refund of Arizona transaction privilege



1 tax. Comdisco is now seeking a refund in the amount of \$1,249,948.95 for the period of June 1996  
2 through 1998 for the sale and lease of Categories B, C, D, and E equipment to Excell.

3 VoltDelta produces packaged database software for long-distance directory-assistance providers.  
4 It does not compile the contents of the directories. In addition, VoltDelta offers entire operator  
5 workstations with customized keyboards. VoltDelta licensed and leased database software and  
6 supplementary equipment, such as keyboards, servers, and cable to Excell. In September 1999,  
7 VoltDelta submitted a request for a refund of transaction privilege tax. VoltDelta is now seeking a refund  
8 in the amount of \$272,827.41 for the period of April 1996 through May 1999 for sales and lease of  
9 Categories B, C, D, E, and F equipment to Excell.

10 The Department denied the refund requests and Appellants protested. A formal hearing was held  
11 before the Office of Administrative Hearings ("OAH"). OAH issued a decision upholding the Department's  
12 denial of the refund requests, except for a refund of nine use tax payments by Excell.

13 The Department timely appealed the OAH decision, and Appellants timely cross-appealed those  
14 issues in which they did not prevail. The Director of the Department reviewed the decision and upheld  
15 the Department's denial of the refund requests, including the nine use tax payments.<sup>1</sup> Appellants now  
16 timely appeal to this Board.

17 DISCUSSION

18 The issue before the Board is whether Appellants are entitled to the transaction privilege or use  
19 tax refunds claimed.

20 Excell contends that its purchase and lease of equipment from Golden should be exempt from  
21 use tax under A.R.S. § 42-5159(B)(3). Golden, Comdisco and VoltDelta contend that their sale and lease  
22 of equipment to Excell should be exempt from transaction privilege tax under A.R.S. § 42-5061(B)(3).  
23 Appellants' position is that all the equipment in categories B through G constitute exempt switchboard  
24

25 <sup>1</sup> The OAH accepted Appellants' argument that the equipment at issue is exempt but found that Appellants' documentary evidence submitted was not persuasive and did not support refunds except in the case of nine use tax payments by Excell. The Director vacated the OAH decision after determining that Appellants were not entitled to any refunds under the exemption statutes.



1 equipment. The exemptions in A.R.S. § 42-5159(B)(3) and A.R.S. § 42-5961(B)(3) are identical and  
2 apply to the following equipment:

3 "Tangible personal property sold to persons engaged in business  
4 classified under the telecommunications classification and consisting of  
5 central office switching equipment, switchboards, private branch  
6 exchange equipment, microwave radio equipment and carrier equipment  
7 including optical fiber, coaxial cable and other transmission media which  
8 are components of a carrier system."<sup>2</sup>

9 Courts narrowly construe tax exemptions against the taxpayer. See, e.g., *Kitchell Contractors,*  
10 *Inc v. City of Phoenix*, 151 Ariz. 139, 726 P.2d 236 (App. 1986). Appellants must demonstrate that the  
11 equipment is 1) tangible personal property 2) sold or leased to persons engaged in the  
12 telecommunications classification (3) that is one of the items listed in the exemption.

13 The Department argues that, whether or not Excell is engaged in the telecommunications  
14 business,<sup>3</sup> the equipment at issue, including the audio recording and voice playback equipment, operator  
15 workstations with customized keyboards, packaged database software, training materials, processors,  
16 and computer equipment, is not specifically exempted under the statutes. Appellant contends that all of  
17 the equipment used in the Excell network qualifies for the exemption as switchboard equipment under the  
18 reasoning of *Duval Sierrita v. Ariz. Dep't of Rev.*, 116 Ariz. 200, 168 P.2d 1098 ( App. 1977) and  
19 *RenalWest v. Ariz. Dep't of Rev.*, 189 Ariz. 409, 943 P.2d 769 (App. 1997).

20 *Duval* involved a statute that exempted equipment "used directly" in mining and metallurgical  
21 operations. A.R.S. § 42-1409(A). The statute in *RenalWest* exempted a "prosthetic appliance," defined  
22 in A.R.S. § 23-501(7) as an "artificial device necessary to support or take the place of a part of the body."  
23 A.R.S. § 42-1409(A)(17). In these cases, the Arizona Court of Appeals considered the tax-exempt status  
24 of a number of items based on whether they were part of the "integrated process" of mining or dialysis

25 <sup>2</sup> All statutory references are to the statutes as they existed during the pertinent audit periods.

<sup>3</sup> There is some indication that the Department may have previously conceded Excell's inclusion under the telecommunications classification. However, the Department now argues that the telecommunications classification is comprised only of the business of providing intrastate telecommunications services and this does not include merely furnishing a caller with a telephone number over the telecommunications network A.R.S. § 42-5064(A).



1 respectively. 116 Ariz. at 206; 189 Ariz. at 414. The statutes in these cases provided functional  
2 definitions of exempt equipment. Thus, the court determined whether the items at issue fit within the  
3 functional definitions provided in the statutes.

4 The statutes in this case do not describe a process or define equipment by its function. They list  
5 specific items entitled to exemption. If the Legislature had intended to exempt all equipment used for  
6 providing telecommunications services it could have phrased the exemptions more broadly, as it has in  
7 the case of other equipment exemptions. See, e.g., A.R.S. § 42-5061(B)(1); A.R.S. § 42-5159(B)(1).

8 For the foregoing reasons, the Board concludes that Appellants are not entitled to the refunds  
9 claimed.

10 CONCLUSIONS OF LAW

11 The equipment at issue is not exempt from tax; therefore, Appellants are not entitled to the  
12 refunds claimed. A.R.S. § 42-5159(B)(3) and A.R.S. § 42-5961(B)(3); *Kitchell Contractors, Inc v. City of*  
13 *Phoenix*, 151 Ariz. 139, 726 P.2d 236 (App. 1986).

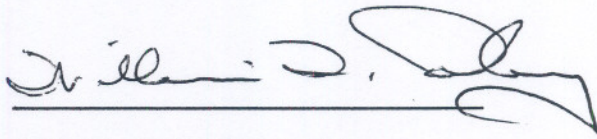
14 ORDER

15 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the  
16 Department is affirmed.

17 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
18 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

19 DATED this 3rd day of September, 2004.

20 STATE BOARD OF TAX APPEALS

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22

23 William L. Raby, Chairperson

24 WLR:ALW

25 CERTIFIED

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